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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/424,116	01/06/2000	GERARD LANG	05725.0489	7571

7590 10/27/2003

FINNEGAN HENDERSON FARABOW
GARRETT & DUNNER
1300 I STREET NW
WASHINGTON, DC 20005

EXAMINER

EINSMANN, MARGARET V

ART UNIT	PAPER NUMBER
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1751

DATE MAILED: 10/27/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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EXAMINER

ART UNIT	PAPER
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Appellant .

DATE MAILED:

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Commissioner for Patents

Appellant has cited a new reference on page 24 of the brief. Since prosecution is closed, such a reference is not permitted.

If it were permitted, it must be cited on an Information Disclosure, filed as a separate paper from the brief and the appropriate fee paid.

CFR 1207 states:

Amendment Filed With or After Appeal

To expedite the resolution of cases under final rejection, an amendment filed at any time after final rejection, but before jurisdiction has passed to the Board (see MPEP § 1210), may be entered upon or after filing of an appeal brief provided that the amendment conforms to the requirements of 37 CFR 1.116. For example, if the amendment necessitates a new search, raises the issue of new matter, presents additional claims without cancelling a corresponding number of finally rejected claims, or otherwise introduces new issues, it will not be entered. A new amendment, new affidavit, or other new evidence must be submitted in a paper separate from the appeal brief. Entry of a new amendment, new affidavit, or other new evidence in an application on appeal is not a matter of right. The entry of an amendment (which may or may not include a new affidavit, declaration, or exhibit) submitted in an application on appeal continues to be governed by 37 CFR 1.116, and the entry of a new affidavit or other new evidence in an application on appeal is governed by 37 CFR 1.195.

Accordingly the reference cited is untimely under CFR 1.116, is not filed as a separate paper, and has no IDS or fee attached.

Additionally it is considered new evidence in an application on appeal which is not a matter of right.

To avoid dismissal of the appeal, Appellant must comply with the provisions of the above cited sections of 37 CFR within the longest of any of the following TIME PERIODS: (1) ONE MONTH or THIRTY DAYS, whichever is longer, from the mailing of this communication; (2) within the time period for reply to the action from which appeal has been taken; or (3) within two months from the date of the notice of appeal under 37 CFR 1.191. Extensions of these time periods may be granted under 37 CFR 1.136

Margaret Einsmann
Margaret Einsmann
Primary Examiner
Art Unit: 1751